IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 30.03.2007

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Writ Appeal No.1962 of 2002

The Estate Officer,
Defence Estates Office,
Madras 1. . Appellant/1st Respondent

Vs.

1. SIMA Publicities,
Rep. by Proprietor ..Respondent/Petitioner

2. The District Judge,
Chengalpet

3. The Divisional Engineer,
Highways & Rural Works,
Saidapet Division, Madras 6. . Respondents/2nd & 3rd Respondents

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 13.7.2001 made in W.P.No.10094 of 1991 passed by the learned single Judge. The Writ Petition filed under Article 226 consitutition of India to issue of writ of Certiorari to call for the records relating to the judgment and decree in CMA No.12/90 dated 22.4.91 on the file of the District Court at Chengalpet, in confirming the proceedings of the Estate Officer, Madras 600 002, under the Public Premises (Eviction of Unauthorized Occupants) Act 1971 dated 23.3.1990 in case No.N/4/ENCR/GLRS/196-A/Z/6/MC on the file of the 1st respondent herein and quash the same.

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For Appellant : Mr.P. Wilson
Assistant Solicitor General of India
For 1st Respondent : Mr.S.Balasubramanian
For 3rd respondent : Mr.P. Subramanian,
Government Advocate

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JUDGMENT

P. SATHASIVAM, J.

The Estate Officer, Defence Estates Office, Madras-1, aggrieved by the order of the learned single Judge dated 13.7.2001 made in W.P.No.10094 of 1991, has filed the above appeal.

2. For convenience, we shall refer the parties as arrayed in the writ petition.

3. According to the writ petitioner, they have been carrying on business in hoardings in the city of Madras by taking sites on lease from the Government. One such hoarding has been erected by them at the junction at KM 0/1-2 Mount Poonamallee Road in the left side near Nehru Statue on the Madras GST Road. The lease of the site, where the hoarding has been put up, was granted to them by the Divisional Engineer, Highways and Rural Works, Saidapet Division, Madras-6, in his letter No.3482/82 (CRS) B6 dated 18.01.1989 under the provisions of G.O.No.908 PWD dated 21.06.1976. The lease was subsequently renewed for the period from 18.01.1990 to 17.01.1991 and the petitioner paid the necessary rent. While so, the first respondent-Estate Officer instituted the proceedings under sub-section (1) of Section 5-B of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and amended by Acts of 1980 and 1984 on 10.01.1990 under the pretext that they are the owners of the land and the petitioner is an unauthorised occupant and hence the Estate Officer passed an order directing demolition of the hoarding on 23.03.1990.

4. Aggrieved by the order dated 23.03.1990, the petitioner preferred Appeal in CMA No.12 of 1990 before the District Judge, Chenglepet. The learned District Judge, on an erroneous ground, held that the land belonged to the Central Government and confirmed the order of the Estate Officer. Questioning the said order, the petitioner has approached this Court by way of writ petition in W.P.No.10094 of 1991.

5. The Estate Officer filed a counter affidavit, wherein it is stated that the dispute raised cannot be gone into while exercising writ jurisdiction. There is nothing on record to show that the Government of Tamil Nadu is the owner of the land in question. On the other hand, the land on which the petitioner had erected hoarding is owned by the Ministry of Defence, Government of India, which agreed to transfer the same to the Government of Tamil Nadu on certain terms and

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conditions for the formation of the Ring Road. However, the Government of Tamil Nadu has not fulfilled all the conditions and have not obtained transfer deed in its favour. Therefore, the land still vests with the Ministry of Defence, Government of India.

6. By an order dated 13.07.2001, the learned single Judge quashed the proceedings of the Estate Officer as well as the order passed by the District Judge, Chengalpet, and allowed the writ petition. Questioning the said order, the present appeal has been filed by the Estate Officer.

7. Heard Mr.P.Wilson, learned Assistant Solicitor General of India for the appellant, Mr.S.Balasubramanian for the first respondent and Mr.P.Subramanian, Government Advocate, for the third respondent.

8. The only point for consideration in this appeal is whether the learned single Judge is right in quashing the orders passed by the Estate Officer as well as the District Judge, Chenglepet.

9. Mr.P.Wilson, the learned Assistant Solicitor General of India, by drawing our attention to various correspondence/proceedings/letters, contended that though the State Government had deposited the value of the land, inasmuch as they had failed to comply with the other conditions, they cannot claim ownership and in fact, the Ministry of Defence, Government of India, is the owner of the land. According to him, in such circumstances, the permission granted by the Divisional Engineer, Highways and Rural Works, Saidapet Division, Government of Tamil Nadu, permitting the writ petitioner-SIMA Publicities to erect hoarding at the junction at KM 0/1-2 Mount-Poonamallee Road near Nehru Statue, cannot be sustained. According to the writ petitioner, since they had obtained valid permission from the third respondent-the Divisional Engineer, Highways and Rural Works Department, Chennai, their possession and occupation of the land in question and erection of hoarding cannot be faulted with.

10. In order to appreciate the rival claims, though the same cannot be considered in depth while exercising jurisdiction under Article 226 of the Constitution of India, the Court has to find out the prima facie case. As stated earlier, the Ministry of Defence, Government of India has agreed to transfer the disputed land in favour of the Government of Tamil Nadu for formation of the ring road. According to the Estate Officer, though the State Government had deposited the required amount, admittedly failed to fulfil

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other two conditions. In this context, it is useful to refer the letter dated 05.03.1985, which speaks about the transfer of land.

" copy of G of I M of d letter No.12/3/L/L&C/63 dated 05.03.85 addressed to the Dte.

Sub: St. Thomas Mount Cantt. Transfer of land measuring 5.91 acres of Defence land in exchange of State Government land measuring 1.44 acres to TN Govt., for Innor Ring Road.

I am directed to convey the sanction of the President to the exchange of 5.91 acres of defence land in St. Thomas Mount Cantt as per details given below with 1.44 acres comprising part of GLRS No.337 (RS No.1353) belonging to the Government of Tamil Nadu on payment of Rs.10,08,543/- (Rs.12,57,544 (-) 2,49,001) to the Min of Def on account of difference in valuation of land and cost of trees standing on Min of Def land:-

Sy No.	5-A	-0.51 acre
"	170	-1.12 "
"	170-A(Pt)	-
"	172	-0.03 "
"	179(pt)	-0.10 "
"	183(pt)	-1.39 "
"	194-A	-1.30 "
"	196-A	-1.46 acre
		5.91 "

2. The above transfer is subject to the following conditions:-

(i) The State Government shall construct a slaughter house of the type and specifications to be approved by the Cantt Board in lieu of the existing one at its own cost on an alternative site to be provided by the Cantt. Board and,

(ii) The State Government shall make necessary arrangements for the free flow of the storm water and other drain water from the existing drains/nullahs in the area by connecting the same to the nearby drain(s) of the Industrial Estate, Guindy.

3. Necessary amendments will be made to the

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GLR/GLR Plan.

4.The amount realised as mentioned in para-1 above will be credited to the major head 069 Defence services(Army) Minor Road 4 Sub head C(b) Receipts from the disposal of surplus lands, buildings etc of the Defence services Estimates.

5.This issues with the concurrence of the Min of Def(Finance) vide their u.o. No.21/8/W-1 of 1985.

Sd/-xxx Dy.Dg. DL&C"

11. The above communication makes it clear that the Government of Tamil Nadu has to pay a sum of Rs.10,08,543/- and construct a slaughter house of the type and to be approved by the Cantonment Board and make necessary arrangements for free flow of the storm water and other drain water from the existing drains in the area by connecting the same to the nearby drain of the Industrial Estate, Guindy. It is not the case of the Government of Tamil Nadu that they have fulfilled all the conditions stipulated in the above communication.

12. No doubt, the letter No.21/91/B1 dated 19.08.1991, was addressed by the Divisional Engineer (H), TNUDP Division-I, Madras-15, to the Military Estate Officer, Fort St. George, Madras-9, which shows that the Government of Tamil Nadu has deposited certain amount for acquisition of the said land. Letter No.3845/88/D2 dated 28.10.1991 of the Superintending Engineer(H), Tamil Nadu Urban Development Project Circle, Saidapet, Madras addressed to the Defence Estate officer, Madras Circle, Subramaniyam Building, III Floor, 1, Club House Road, Madras-600 032 shows that the possession was not handed over by the Estate officer. By another letter dated 21.09.1995, the Defence Estate Officer, Madras Circle, Fort St. George, Madras-9, has requested the Tahsildar, Saidapet, Madras-15, to take immediate action to hand over formal possession of the land to the Defence Department, if the Court cases have been decided.

13. Though the learned single Judge proceeded on the footing that actually possession had been handed over to the Government of Tamil Nadu, the letter dated 15.01.1998 of Defence Estates Office, Madras Circle, Chennai-18, addressed to Assistant Divisional Engineer (H&W), Saidapet Sub Division, Chennai-15, makes it clear that no physical possession had been taken at any time. The following facts stated in the said letter are relevant:

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"In this connection it is mentioned that the Physical possession of defence land measuring 5.91 acres in St. Thomas Mount Cantonment cannot be handed over to your Deptt., unless and until the State Govt. will hand over an area measuring 1.44 acres of land in GLRs No.337 (R.S.No.1358) to the defence Deptt. which involves an exchange deal in this case."

14. In the subsequent letter dated 27.03.2001 of the Defence Estates Office, Madras Circle, Chennai-18, addressed to the District Collector, Kancheepuram District, the following information stated therein are relevant:

"4. However, formal possession of the Defence land could not be handed over to the Highways Department (although the said land is under their physical occupation)

for traffic Island at Nehru Statue and Inner Ring Road etc. as the land measuring 1.44 acres in GLRS No.337 stated above is involved in a Court case (WP.No.5622/1985) and the case is stated to be Subjudice in High Court, Chennai, as per the report of the Tahsildar, Tambaram.

5. It is, therefore, requested that necessary instructions may please be issued to the Tahsildar, Tambaram to get the case disposed off early; so that, the possession of Defence land and State Govt. land as detailed above could be handed over/taken over without any further delay.

6. It is pointed out that the Exchange Deal was sanctioned in 1985 and even after 15 years, it could not be finalised. Our higher authorities are insisting for finalisation of the Deal as quickly as possible.

7. In view of the above, please look into the matter personally and issue appropriate orders to the concerned Deptt./officials to speed-up the case and bring it to finalisation/completion."

15. In the D.O. Letter dated 29.01.2002 by the Defence Estates Office, Madras Circle, Chennai-19 addressed to the District Collector, Kancheepuram District, the following information referred therein are relevant:

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"Govt., of India, Min. of Defence sanction vide letter No.12/3/L/L&C /53 dated 05.03.85 for the Exchange Deal of State Government land measuring 1.44 acres in GLRS No.337 (RS No.1353) of St. Thomas Mount cum Pallavaram Cantt. to be handed over to this Office in lieu of handing over of Defence land measuring 5.91 acres comprising GLRs No.5-A, 170, 178-A part, 172, 179 part, 183 Part, 194-A and 196-A of St. Thomas Mount cum Pallavaram Cantt., is yet to be finalised even after a lapse of more than 16 years.

Hence I would like to request you to issue necessary instructions to all concerned so that the case is finalised early."

16. The same position has been reiterated by the very same Officer in the subsequent letter dated 18.09.2003 to the District Collector, Kancheepuram.

17. The above mentioned details, which are available in the additional typed set of papers filed by the Assistant Solicitor General of India, clearly show that neither the Defence Department nor the Government of Tamil Nadu hand over/exchange their respective lands as agreed to. In such circumstances, as rightly pointed out by the learned Assistant Solicitor General of India, we are of the view that the learned single Judge is not justified in arriving at a conclusion that the first respondent, viz., Estate Office, Defence Estates Office, is ceased to have title or possession or control as the Central Government is no longer the owner and it is the property of State Government.

18. On the other hand, the materials placed before us clearly show that, first of all, the State Government had not fulfilled all the conditions as stated in the earlier letter dated 05.03.1985 and secondly, the title or entitlement cannot be agitated and gone into in a writ petition filed under Article 226 of the Constitution of India. At this juncture, it is useful to refer the Division Bench decision of this Court reported in 1994 Writ Law Reporter 656 (UNION OF INDIA ETC AND OTHERS VS. V.KRISHNAMURTHY ETC. 2.THE STATE OF TAMIL NADU). The facts of the present case and the facts referred to in the Division Bench case are identical. In the aforesaid case, the first respondent therein viz., V.Krishnamurthy, Proprietor, M/s Meena Advertisers & U-Matic Video Studio, Madras, was granted permission by the State Government in G.O.Ms.No.1765 dated 22.12.1992 to erect hoardings in certain locations mentioned in

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that Government order, which are situated on the National Highway 45, subject to the usual terms and conditions. One such location is at Km 12/720, which is in dispute. The stand taken by the appellants-Union of India, Defence Department, Estate Officer and the Executive Officer, Cantonment Board, St. Thomas Mount, Madras, was that the land in which the hoarding was erected belonged to the Defence Department and no permission was granted by the Defence Department to erect any hoarding. According to them, on noticing the unauthorised hoarding, they directed removal thereof pursuant to sub Section (3) of Section 5-A of the Public Premises (Eviction of Unauthorised occupants) Act, 1971. The Division Bench, after noticing the judgment of the Supreme Court in *Sohan Lal's Case* (AIR 1957 SC 529), has observed that a question relating to rival claim of title to the property cannot be decided in the writ proceedings.

19. The factual position in the decision of the Division Bench shows that while the State Government has proceeded on the footing that it is entitled to deal with the property and granted permission to the first respondent therein to erect the hoarding, the appellant claimed title by relying upon the Land Register maintained by them. As stated earlier, the abovesaid factual aspects are identical to the present case. In those circumstances, the Division Bench has observed in para 12 as follows:

> "12. As we are not going to decide the question of title to the property, which should be settled only in a regular civil proceeding before the Court, we do not propose to make any observation with regard to the same. It must be pointed out that there is a rival claim between the State Government on the one hand and the Military authorities on the other. It is, therefore, a matter which cannot be decided in these proceedings under Art.226 of the Constitution of India."

20. Taking note of similar dispute to the case on hand, particularly, in the light of abundant materials placed by the petitioner/appellant, the Estate Officer, we are in respectful agreement with the above view and hold that such rival claim between the State Government on the one hand and the Defence Authorities on the other, cannot be decided in these proceedings while exercising jurisdiction under Article 226 of the Constitution of India.

21. Apart from the above decision, it is relevant to point out that against the order of the Estate officer, the writ

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petitioner before filing the writ petition, filed an appeal in CMA No.12 of 1990 before the District Court, Chengalpet. It is useful to mention that during the pendency of the appeal, the Divisional Engineer, Highways and Rural Works, Saidapet Division, Madras-6 got himself impleaded as second respondent in the said appeal. All the parties including the office of the State Government were represented by the counsel before the District Court, Chengalpet. After considering all the issues, the learned District Judge has concluded as follows:

'வா.சா.ஆ.1லிருந்து எதிர் வாதி உபயோகத்திலிருந்து வரும் இடமானது வாதிக்கு பாத்தியப்பட்டது என்பது தெளிவாகிறது. அவ்வாறே வா.சா.ஆ.2லிருந்து சம்பந்தப்பட்ட இடம் மத்திய அரசுக்கு மாற்றம் செய்ய நடவடிக்கை எடுக்கப்பட்டு அதற்கான உத்திரவு, பிறப்பிக்கப்பட்டுள்ளது. அப்படியிருக்கும்போது 2வது எதிர் மனுதாரர் அனுமதியின் பேரில் எதிர் வாதி சம்பந்தப்பட்ட இடத்தை அனுமதி பேரில் உபயோகப்படுத்தி வருவதாக கூறுவது ஏற்றுக் கொள்ள முடியாத ஒன்று. எதிர் வாதி தரப்பில் அவரது அனுபவம் முறையற்றது என்பதை காட்ட எந்தவிதமான ஆவணமும் தாக்கல் செய்யப்படவில்லை, மேற்படி வாதி தரப்பு, உத்திரவு, எந்தவிதத்தில் சரியல்ல என்று எதிர் வாதியால் சரியான வகையில் விளக்கப்படவில்லை. சம்பந்தப்பட்ட இடம் மத்திய அரசுக்கு பாத்தியப்பட்டது. எனவே இதை எதிர் வாதி அனுமதியில்லா விளம்பரத்திற்காக உபயோகித்து வருவது முறையற்றதுதான்.'

22. It is clear from the above that the learned District Judge, Chenglepet, on the basis of factual materials, has concluded that the land in question belongs to Government of India. After finding so, the learned District Judge has dismissed the appeal filed by the appellant-writ petitioner. In view of the categorical finding that the land in question belongs to Government of India, the State Government-second respondent therein did not challenge the same by filing a writ petition. No reason has been forthcoming from the State Government for not challenging such a finding, which is binding on it. The learned single Judge has failed to notice the aforesaid relevant aspect.

23. In these circumstances, we are unable to agree with the conclusion arrived at by the learned single Judge. On the other hand, the abundant materials clearly show that the land in question belongs to the Ministry of Defence, Government of India. It is made clear that the conclusion arrived at by us is only a prima facie conclusion for the disposal of the present writ appeal. It would be open to the State Government, if they are so advised, to establish their case before the

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appropriate Forum by placing acceptable materials. It is also brought to our notice that as on date, no hoarding is available in the land in question and the first respondent - writ petitioner is not interested to proceed further. The learned Assistant Solicitor General of India has also brought to our notice that in view of the construction of over bridge and the expansion of the road in and around Nehru Statue, the disputed land is required for the same.

24. In these circumstances, the writ appeal is allowed and the order of the learned single Judge dated 13.07.2001 made in W.P.No.10094 of 1991 is set aside. No costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

raa

To

1. The District Judge,
   Chengalpet

2. The Divisional Engineer,
   Highways & Rural Works,
   Saidapet Division, Madras 6.

+1cc to Mr.P.Wilson, Advocate Sr 20541
+1cc to Govt. Pleader Sr 20610

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